

CITY COUNCIL REPORT



MEETING DATE:
02/19/2008

ITEM NO.

17

GOAL: Preservation Character

SUBJECT

Council direction on whether to appeal jury verdict in Toll Brothers condemnation case.

REQUEST

Direct the City's attorneys to pursue an appeal of the judgment in *City of Scottsdale v. Toll Brothers AZ Construction Company*, CV2004-001025, presently pending in the Maricopa County Superior Court.

Related Policies, References: Resolution No.6434, which authorized the condemnation of this 383.40 acre parcel for the McDowell Sonoran Preserve.

BACKGROUND

On January 16, 2004 the City filed a condemnation action seeking to acquire 383.40 acres of land which had been designated as the Gateway Property for the McDowell Sonoran Preserve. The property is located at the northeast corner of Bell Road and the Thompson Peak Parkway. The City's appraisal was in the amount of \$33,800,000. Toll Brothers' appraisal was in the amount of \$120,000,000, but through motion practice the amount was reduced by approximately \$13,000,000. The case went to trial on January 8, 2008, and after ten trial days and two days of deliberations the jury on January 25, 2008 returned a verdict in the amount of \$81,903,496.00.

ANALYSIS & ASSESSMENT

The City has the right to ask the Court of Appeals to set aside the verdict and to grant the City a new trial. There were several rulings made by the trial court that provide grounds for an appeal. The law requires the City to pay the judgment while the case is on appeal so the City will have possession of the property while the appeal is pending. It is estimated that the costs incurred by the City for the appeal will be between \$150,000 and \$200,000.

RESOURCE IMPACTS

The costs of appeal would be paid from funds reserved for the acquisition of real property within the McDowell Sonoran Preserve study boundary. Payment will be made from funds available in capital account number 52140.

OPTIONS & STAFF RECOMMENDATION

Option A: Authorize counsel to proceed with the appeal

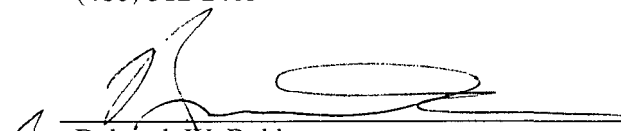
Option B: Do not authorize counsel to proceed with the appeal and end the litigation.

RESPONSIBLE DEPT(S)

General Government, City Attorney's Office – Civil Division

STAFF CONTACTS

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APPROVED BY

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2/14/08
Date

ATTACHMENTS